

In re) Fair Hearing No. 19,445
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Appeal of)

The petitioner appeals the decision by the Department for Children and Families Economic Services (DCF) terminating her Food Stamps. The issue is whether the petitioner refused to cooperate with a quality control review of her case within the meaning of the pertinent regulations.¹

1. The petitioner receives Food Stamps as a single-person household. Her only other income is General Assistance (GA).

2. In August 2004 the Department conducted a random quality control (QC) review of the petitioner's eligibility. As part of that review the Department asked the petitioner to verify her place of residence. The Department provided the petitioner with a rental verification form to be filled out and signed by her landlord.

¹ In an Order dated February 11, 2005 the Board reinstated the petitioner's Food Stamps effective February 1, 2005 pending the issuance of the hearing officer's recommendation.

3. The petitioner maintains that during the entire month of August 2004 she was living as a sublessee in an apartment rented by "Rose", who at the time was a friend of hers. The petitioner maintains, and reported to the Department, that she paid Rose \$160 a month for her room.

4. The petitioner further maintains that Rose had a Section 8 certificate and was subletting to her without the permission of her landlord. Thus, when the petitioner gave Rose the Department's residence verification form, Rose filled it out as stating that the petitioner was living with her (Rose's) son and his girlfriend at a different address.

5. The Department maintains that the petitioner, as directed, contacted the QC reviewer by phone on October 19, 2004, and initially stated that she was living with Rose's son, but that later in the conversation she stated that she had been living with Rose in August and that Rose had falsely filled out the form otherwise.

6. Immediately following that conversation the Department sent the petitioner a notice closing her Food Stamps effective October 31, 2004, for failure to cooperate with her QC review.

7. The petitioner maintains that sometime in September or October 2004 she moved out of Rose's apartment and began

renting a room in the home of another woman, "Leona". She also maintains that Rose was pressuring her not to reveal that she had been living with her before that. The petitioner maintains that out of loyalty to Rose she had Leona fill out a verification form on November 1, 2004 saying that the petitioner had been living with her in August. However, to tangle the web further, on November 15, 2004, both Rose and Rose's son's girlfriend signed verification forms saying that the petitioner had been living at Rose's son and his girlfriend's address in August.

8. On November 8, 2004, the petitioner reapplied for Food Stamps. On the application she stated that she was living with Leona.

9. It does not appear that the Department has ever doubted that the petitioner has been living with Leona, at least since November 1, 2004.

10. Before denying the petitioner's new application for Food Stamps, the Department received a verification form signed by another friend of the petitioner, "Melissa", stating that the petitioner had been living with Rose in August 2004.

11. And, as if the matter could get any more confusing, on November 30, 2004 the Department received a verification

form *signed by Rose herself* stating that the petitioner had been living with *her* in August. However, when the QC reviewer called Rose to verify this, Rose stated that she had not signed the form, and that the petitioner had *not* lived with her in August.

12. The QC reviewer also verified at that time that Rose's landlord had no knowledge that the petitioner had ever lived with Rose.

13. The Department denied the petitioner's November 8 reapplication on December 8, 2004 because of the petitioner's failure to have cooperated with QC regarding her residence in August.

14. At hearings in this matter held on January 21 and February 7, 2005, the petitioner did not dispute any of the above information. She maintains, however, that she *did* live with Rose in August 2004. Moreover, she admits she gave conflicting information to the Department (including the false verification statement purportedly signed by Rose) because she was desperate for Food Stamps and did not know how to extricate herself from the web of deceit resulting from her loyalty to Rose (which she now emphatically understands was entirely misplaced and ill-advised).

15. The Department concedes that it has no direct evidence that the petitioner did not, in fact, live with Rose in August 2004.

16. The Department's exasperation with the petitioner may be understandable. However, the only issue ever actually unresolved in this case was the petitioner's exact place of residence in August 2004. But even if the petitioner was not residing where she said she was, there has been no claim or showing by the Department that the petitioner's *underlying eligibility for Food Stamps* has ever actually been in question. Assuming she was living somewhere in Vermont and was purchasing and preparing her meals by herself, *neither of which was ever in dispute*, the only thing that could have affected the petitioner's eligibility for Food Stamps was her income and rent expenses--again, *neither of which was ever in dispute*.

17. More importantly, however, there is no showing that the petitioner ever "refused" to cooperate with the Department in the determination of her place of residence in August 2004, at least certainly not before the Department terminated her benefits for this reason on October 19, 2004. The petitioner did fail to obtain accurate verification *from* Rose as to her place of residence at this time. Moreover,

she admits that due to her (entirely understandable) duress over this, and the (very real) threat she perceived to her continuing eligibility for Food Stamps, she initially gave conflicting information to the QC reviewer on that date, which she later corrected. There is no indication, however, that the Department ever pursued or suggested any *other* means of verification the petitioner could have provided regarding her August residence. Thus, it cannot be found that the petitioner ever refused *to cooperate* with the Department prior to the Department's decision to terminate her benefits on October 19, 2004.

ORDER

The Department's decision terminating the petitioner's Food Stamps is reversed and the petitioner shall be paid any unissued Food Stamps from October 31, 2004 to the present.

REASONS

Food Stamp Manual § 273.2 provides: "the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as part of a quality control review." As of October 19, 2004, the date of its decision, the Department had established only that the petitioner had claimed to be living at a residence other than

where her alleged sublessor had "verified". However, at that time the petitioner had provided all the documents requested by the Department. Her residence may still not have been verified to the Department's satisfaction, but there is absolutely no showing that the petitioner ever "refused" any request of the Department in this regard. Under the regulations, the next step should have been for the Department to request further verification (see F.S.M. § 273.2[f]), not simply cut off the petitioner's benefits.

Moreover, the Department has *never* shown or maintained that the petitioner did not, in fact, live where she said she did in August 2004 (or any other month, for that matter). Nor does it maintain that, even if she did live elsewhere, this would have affected either her eligibility for or the amount of her Food Stamps. Absent any evidence whatsoever in this regard, the Department's decision sanctioning the petitioner's Food Stamps at that time must be viewed, at best, as premature and, at worst, as draconian.

In light of the above, the petitioner should never have been in the position of having to reapply for Food Stamps in November 2004. Although she admits that (due to duress and desperation) she gave conflicting and inaccurate information regarding her residence in August to the Department at the

time of this application, again the Department makes no claim or showing that she was not actually eligible for Food Stamps at any time either before or after she reapplied.

Inasmuch as the Department had no basis under its own regulations to have terminated the petitioner's Food Stamps as of October 19, 2004, its decision must be reversed, and any Food Stamps not paid to her after that time must be issued retroactively.

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